

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

THE PEOPLE OF THE STATE OF ILLINOIS,)	
<i>ex rel.</i> Lisa Madigan, Attorney General of the State of)	
Illinois,)	
)	Docket No. 13-0501
Complaint to suspend tariff changes submitted by)	
Ameren Illinois and to investigate Ameren Illinois Rate)	
MAPP pursuant to Sections 9-201, 9-250, and 16-108.5)	
of the Public Utilities Act;)	
)	
AMEREN ILLINOIS COMPANY)	
d/b/a Ameren Illinois,)	
)	Docket No. 13-0517 (cons.)
Revision to its Formula Rate Structure and Protocols.)	
)	
)	

**REPLY BRIEF ON EXCEPTIONS REGARDING BIFURCATED ISSUES
OF AMEREN ILLINOIS COMPANY**

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ORAL ARGUMENT REQUESTED

DATED: May 30, 2014

RESPONSE TO CUB AND COMMISSION STAFF

The ALJPO (incorrectly) concludes that the “formula rate structure” includes only Schedules FR A-1 and FR A-1 REC. (*See* ALJPO at 18-19; AIC BOE at 3-17.) As AIC has explained, this definition will make it easy for the utility (and Staff and other parties) to propose changes to the formula rate in any and every update proceeding. (AIC BOE at 3-17.) If anything, the Briefs on Exceptions (BOE) submitted by Staff and CUB confirm this.

The EIMA provides that the Commission may not “consider or order any changes to the structure or protocols of the performance-based formula rate” in an annual update proceeding, 220 ILCS 5/16-108.5(d)(1), but instead must consider such changes in a Section 9-201 proceeding. 220 ILCS 5/16-108.5(c). Thus, a finding that Schedules FR A-1 and FR A-1 REC *alone* constitute the “structure” necessarily means that changes to the remaining Schedules and Appendices may be proposed and considered in annual update proceedings.

The exceptions language submitted by Staff and CUB confirms that changes to all Schedules and Appendices other than FR A-1 and FR A-1 REC may be proposed and considered in annual update proceedings. CUB recommended that the Commission conclude “only changes to Schedules FR A-1 and FR A-1 REC should require Commission approval through a Section 9-201 proceeding,” while all “changes to other tariffs, schedules, workpapers etc.” can be considered in an annual update. (CUB BOE at 5-6.) Staff offered similar language. (Staff BOE at 4-5, 6.) Thus, there appears to be no real dispute that a variety of changes to Schedules and Appendices could be proposed, litigated, and decided upon in any annual update proceeding. So described in AIC’s brief on exceptions, AIC could propose to increase its rate base by more than \$10 million to account for outstanding balances on budget payment plans. (AIC BOE at 6.) AIC could propose to eliminate the deduction of ADIT from projected plant, thereby increasing rate base, or propose to “gross up” the weighted average cost of capital when calculating the interest

amount on reconciliation balances. (*Id.*) AIC could alter the method by which its return on equity is calculated by simply adding a line item containing any number of basis points, (*id.* at 7), or alter the source of the rate base component for the calculation of the return on equity collar in a way that would lessen the likelihood of collar adjustments. (*Id.* at 6.) Each of these changes alters the methodology by which AIC's formula rate is calculated, but *none* of the alterations would take place on Schedule FR A-1 or FR A-1 REC. (*Id.*) And Staff has acknowledged that a party could seek to change the methodology for the calculation of the formula rate revenue requirement in an annual update proceeding. At hearing, Ms. Ebrey testified that:

Q. And a party could propose to remove line 40a [for ADIT on projected plant] in an annual updated reconciliation; is that right?

A. Once again I'm—I suppose they could, but the parties have been focused on the actual revenue requirement and not focused on items that appear on the schedules—line items as they appear on the schedules.

Q. But if that proposal were adopted, that would change—If the proposal were made and adopted by the Commission, that would change the methodology by which the filing of revenue requirement was calculated, right?

A. Yes.

(Tr. 116.) Neither the ALJPO nor the parties explain how such a change in “methodology” does not constitute a change to the “structure” that cannot, by statute, be considered in an annual update.

Staff's briefs on exceptions also highlight the flaw in the ALJPO's artificial distinction between FR A-1 and FR A-1 REC and the rest of the Schedules and Appendices. The ALJPO divides the Schedules and Appendices into “structure” (Schedules FR A-1 and FR A-1 REC), and “not-structure” (the rest). (ALJPO at 18-19.) This attempts to draw a distinction where no distinction actually exists—all 23 of AIC's formula rate Schedules and Appendices operate together to set forth the methodology for calculating the formula rate. (AIC BOE at 3.) Staff's

brief on exceptions confirms the rest: it repeatedly refers to the Schedules and Appendices other than FR A-1 and FR A-1 REC as “supporting documents,” and proposes language for the Commission’s order acknowledging that the “supporting documents [are] to *provide guidance in the development of the inputs* for Schedules FR A-1 and FR A-1 REC.” (Staff BOE at 4 (emphasis added).) Staff is correct on this point—together, the Schedules and Appendices contain the formula used to develop the formula rate, and Schedules FR A-1 and FR A-1 REC summarize the results of the calculations carried out on the remaining Schedules and Appendices. If, as Staff’s language states, the Schedules and Appendices support and provide guidance to the development of Schedules FR A-1 and FR A-1 REC, the calculations shown on Schedules FR A-1 and FR A-1 REC cannot mathematically or logically be separated from the calculations shown on the remaining Schedules and Appendices. They must all be part of the “structure” of the formula rate.

As discussed in AIC’s BOE, the ALJPO contravenes the legislature’s intent that the formula rate process operate in a “standardized” manner, ignores the plain language of the EIMA, and is inconsistent with both recent Commission decision and a recent decision of the Fourth District Appellate Court. (AIC BOE at 3-4, 10-13.) The exceptions proposed by CUB and Staff would not cure this result. Because the exceptions language offered by Staff and CUB only solidify the ALJPO’s misplaced distinction between Schedules FR A-1 and FR A-1 REC and the remaining Schedules and Appendices, they should be rejected. Adoption of the ALJPO by the Commission would only cement these legal problems and invite appellate review. But, this problem can easily be solved by adoption of AIC’s exceptions language, which formalizes existing Commission practice of considering the “structure” to include all formula rate Schedules and Appendices, and which conforms with the language and intent of the EIMA as well as

existing Commission and Appellate Court precedent.

For the reasons stated here and in AIC's brief on exceptions, AIC requests that the exceptions language proposed by Staff and CUB be rejected, and the exceptions language in Appendix A to AIC's BOE be adopted.

Dated: May 30, 2014

Respectfully submitted,

AMEREN ILLINOIS COMPANY
d/b/a Ameren Illinois

By: /s/ Albert D. Sturtevant
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CERTIFICATE OF SERVICE

I, Albert D. Sturtevant, an attorney, certify that on May 30, 2014, I caused a copy of the foregoing *Reply Brief on Exceptions Regarding Bifurcated Issues of Ameren Illinois Company* to be served by electronic mail to the individuals on the Commission's Service List for Docket Nos. 13-0501/13-0517 (cons.).

/s/ Albert D. Sturtevant
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